

**CAPRICORN PRIVATE WEALTH CREDIT CARD TERMS AND CONDITIONS**

These terms and conditions are applicable to the **Credit Card Facility (“the Facility”)**

**1. DEFINITIONS**

In this agreement:

- 1.1. **“Access Channel”** means any form of access technology including the Internet or mobile phone technologies or Interactive Voice Response (“IVR”) system;
- 1.2. **“Applicable Laws”** means all applicable laws, ordinances, writs, regulations, judgments, orders, published practices, official directives, rulings, notice, announcement (including but not limited to any budget speech) or guideline by any government entity of the Republic of Namibia including any court, agency or authority (whether or not having the force of law) including the environmental regulations and labour safety regulations;
- 1.1. **“Agreement”** means the Facility Letter and these Credit Card Terms and Conditions, including any amendments made to this document from time to time;
- 1.2. **“the Account”** means the bank account held at the Bank to which the Card relates and which is designated by the Borrower for the posting of his Card transactions;
- 1.3. **“the Account Holder”** means the person whose account, whether individually or jointly with others, is to be credited in respect of the Card transactions;
- 1.4. **“ATM”** means an automated teller machine;
- 1.5. **“Attorney and own Client Scale”** means fees which the Bank agrees to pay his attorney for services rendered in respect of a legal matter.
- 1.6. **“Bank”** means Bank Windhoek Limited, registration number 79/081, and its assigns and successors in title;
- 1.7. **“Bank ATM”** means a Bank Windhoek automated teller machine;
- 1.8. **“Borrower”** means the person or persons to whom the Facility is granted;
- 1.9. **“Card”** means, but is not limited to, a Visa Classic, Visa Premier, Visa Electron Debit, Credit Card issued by the Bank to the Borrower and/or any other Card Holder;
- 1.10. **“Card Holder”** means the Borrower or a person nominated by the Borrower to be issued with a Card;
- 1.11. **“Card transactions”** means the value of the goods and services purchased or paid for by means of a Card or of cash withdrawals effected with a Card;
- 1.12. **“Changes in Law”** means any implementation, introduction, abolition, withdrawal or variation of any Applicable Laws, regulation, published practice or concession or official directive, ruling, request, notice, announcement (including but not limited to any budget speech), guideline by any government entity (whether or not having the force of law) in the Republic of Namibia or any change in any interpretation, or the introduction or making of any new or further interpretation or compliance with any new or different request or direction (in either case whether or not having the force of law) from any government entity;
- 1.13. **“Common Monetary Area”** means South Africa, Namibia, Lesotho and Swaziland;
- 1.14. **“Collateral”** means any security in whatever form, whether registered or not, afforded to the Bank, if applicable, to secure the payment of the Borrower’s loan obligations in terms of this Agreement;
- 1.15. **“Constitutive Documents”** means the documentation establishing or regulating the Borrower, regardless of whether the documentation is registered or not, such as, but not limited to, a memorandum and articles of association, association agreements, trust deed, constitutions of associations and the like;

- 1.16. **“Credit Card”** means a Visa Credit Card or Visa Electron Credit Card issued by the Bank in the name of the Borrower and the Card Holder;
- 1.17. **“Credit Interest”** means the rate of interest accruing to credit balances in the Account.
- 1.18. **“Debit Interest”** means the rate of interest accruing to debit balances in the Account.
- 1.19. **“Goods and Services”** means goods sold or services rendered by any natural or legal person such as, but not limited to, a Merchant;
- 1.20. **“the Facility”** means the credit card facility made available as set out in this Agreement;
- 1.21. the **“Facility Limit”** means the amount as provided for in the Facility Letter.
- 1.22. **“Merchant”** means a merchant recognised by the Bank to have an internationally recognised merchant category code as set by the international Card associations;
- 1.23. **“Material Adverse Effect”** means, as determined by the Bank, in exercising its sole but reasonable discretion, an event, circumstance, or matter, or combination of events, circumstances or matters, which has, or will have, or would be likely to have, a material adverse effect on:
- 1.23.1. The ability of the Borrower to comply with its obligation under this Agreement, such as, but not limited to:
- 1.23.1.1. any deterioration in the Borrower’s financial position; and/or
- 1.23.1.2. any cheque drawn by the Borrower being dis-honoured; and/or
- 1.23.1.3. any account of the Borrower with the Bank becoming irregular; and/or
- 1.23.1.4. the Borrower conducting his financial affairs and matters relating thereto in an unsatisfactory manner; and/or
- 1.23.1.5. the Borrower incurring or effecting capital expenditures which are not justified by its cash flow;
- 1.23.2. The business, operations, property, condition (financial or otherwise) or prospects of the Borrower and includes any substantial restructuring, disposal of material assets or arrangement;
- 1.23.3. Changes in Law resulting in increased costs to the Bank;
- 1.23.4. Changes to Namibian financial markets resulting in increased costs to the Bank;
- 1.24. **“Mutatis Mutandis”** shall mean (used when comparing two or more cases or situations) make necessary alterations while not affecting the main point at issue;
- 1.25. **“Network Service Provider”** means any cell phone service provider;
- 1.26. **“Principal Card Holder”** means the Borrower to whom a Card has been issued; **“Secondary Card Holder”** means a person in whose name an additional Card has been issued and **“Multiple Card Holders”** means persons in whose name an additional Card has been issued. The term **“Card Holder”**, when used in this Agreement on its own, includes the Principal, Secondary Card Holder and the Multiple Card Holders;
- 1.27. **“Principal Debt”** means the total outstanding amount from time to time, namely the Facility Limit stipulated in the Facility Letter on which interest is to be calculated, together with all other costs, fees and charges in terms of this Agreement;
- 1.28. **“Prime Interest Rate”** means the interest rate from time to time published by the Bank as being its Prime Overdraft Rate as certified by any manager of the Bank, whose appointment and designation need not be proved;

- 1.29. **"Prime Overdraft Rate"** means the interest rate from time to time published by the Bank as being its Prime Overdraft Rate as certified by any manager of the Bank, whose appointment and designation need not be proved.
- 1.30. **"PIN"** means the Personal Identification Number issued by the Bank to the Card Holder for use with the Card;
- 1.31. **"POS"** means the point of sale of any authorised merchant or establishment equipped with a terminal to accept a Card and Card transactions;
- 1.32. **"Purchase transaction"** means the transaction processes by the supplier of goods sold and services paid for using the Card;
- 1.33. **"SMS Notification"** means a short messaging service text sent by the bank to the Borrower via a Network Service Provider;
- 1.34. **"Standard chargeable levies"** means the fees and charges as advertised by the Bank from time to time, a copy of which is available on request and on our website.
- 1.35. **"Travel Policy"** means the VISA Platinum Travel Insurance Policy, which provides for travel insurance when the Borrower purchases a travel ticket using the Credit Card;
- 1.36. **"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
- 1.37. **"Tax Deduction"** means a deduction or withholding for or on account of Tax from any payment due under this Agreement;
- 1.38. **"Usury Act"** means the Usury Act No 73 of 1968, as amended;
- 1.39. **"Visa"** means Visa International Services Association;
- 1.40. the Interpretation in this Agreement, unless otherwise indicated by the context:
- 1.40.1. Words importing one gender shall include the other genders, words in the singular shall include the plural and vice versa and natural persons shall include created entities.
- 1.40.2. Clause headings have been inserted for convenience only and should not affect your interpretation of the Terms.
- 1.40.3. The rule of construction, that these Terms must be interpreted against the party responsible for the drafting or preparation of the Terms does not apply.
- 1.40.4. The use of the words "include" or "including" in these Terms followed by a specific example/s shall not be construed or interpreted as limiting the meaning of the general wording preceding it.

## **2. ISSUE OF THE CARD**

- 2.1 The Bank shall issue a Card to an applicant Card Holder whose application has been accepted by the Bank at the Bank's sole discretion.
- 2.2 The issue of the Card is subject to the terms and conditions of its credit card scheme, as published by the Bank from time to time.
- 2.3 The Card, at all times, remains the property of the Bank, and the Card Holder must return it to the Bank immediately upon request.
- 2.4 The Card is a Visa-branded card, issued by the Bank under licence of Visa.
- 2.5 The Card enables the Card Holder to:

- 2.5.1 withdraw cash from any Bank ATM and from selected POS locations, as well as all ATMs displaying the Visa and/or Visa Electron emblem, in the currency of the country where the ATM or POS is located;
  - 2.5.2 pay electronically for goods and services both locally and abroad, at the POS of any authorized Merchant;
  - 2.5.3 obtain through any Bank ATM an account balance and a statement of the latest transactions thereon;
  - 2.5.4 effect on any Bank ATM, and within limits authorized by the Bank, transfers between any of his Bank accounts designated by him and agreed to by the Bank;
  - 2.5.5 change his PIN at any Bank ATM; and
  - 2.5.6 to receive SMS Notifications.
- 2.6 At the written request of the Principal Card Holder, the Bank may, in its sole discretion, issue an additional Card to a Secondary Card Holder, nominated in such request and whose Card transactions will be chargeable to the Account. In this regard it is agreed that:
- 2.6.1 the Bank, in addition to any other rights provided herein, may immediately cancel any rights of a Secondary Card Holder by giving notice of cancellation to the Principal Card Holder in which event the Principal Card Holder shall secure the return of the Secondary Card Holder's Card to the Bank;
  - 2.6.2 the Principal Card Holder may terminate the rights of any Secondary or Multiple Card Holder by advising the Bank in writing and such termination shall only become effective upon the Principal Card Holder securing the return of such Secondary or Multiple Card Holder's Card to the Bank;
  - 2.6.3 the Principal Card Holder shall be responsible for payment to the Bank of all indebtedness incurred as a result of any Card transaction concluded by a Secondary Card Holder;
  - 2.6.4 these conditions shall apply Mutatis Mutandis to any Secondary Card Holder as if such Secondary Card Holder were the Principal Card Holder.
- 2.7 In the event that the Account earmarked for Card transactions is operated on by Multiple Card Holders, the Account Holder consents to the use of the Card(s) by the designated Card Holders and the eventual debits to the Account resulting from such use.

### **3. FACILITY LIMITS**

- 3.1. The Facility Limit advanced to the Borrower by the Bank shall be in the Bank's sole discretion and subject to normal credit criteria of the Bank being met and collateral security, if required, being furnished prior to utilisation of the Facility. The Facility amount remains applicable for the duration of the time it remains due and payable to the Bank.
- 3.2. The Bank, within its sole discretion, may at any time, reduce or increase the credit limit allocated on the Account.
- 3.3. The Bank reserves the right to decide the credit limit on the Account and the Borrower must ensure that the Card Holders do not exceed the limit.
- 3.4. The Borrower may apply for an increase to the credit limit, which increase shall be evaluated by the Bank. The Bank may in its sole discretion and subject to normal credit criteria of the Bank being met and collateral security, if required, being furnished increase the Facility.
- 3.5. The Borrower is responsible for managing the credit limit on the Account.
- 3.6. The Bank may refuse to authorise purchases and cash withdrawals if the Borrower and/or the Card Holders have exceeded the credit limit.

- 3.7. In the event that the Bank accepts a transaction that results in the Borrower/Card Holder exceeding the credit limit, the credit limit will not be regarded as having been extended or increased. The Borrower however acknowledges that he will be liable to repay the Facility amount together with any amounts exceeding the Facility amount
- 3.8. Except as set out in clause 3.10 below, the Borrower, Account Holder and Card Holder will indemnify and reimburse (i) the Bank, (ii) the Bank's agents and nominees, and (iii) the Bank's officers and employees and that of the Bank's agents or nominees (collectively called "the Relevant Parties") for the following items which the Relevant Parties may incur or suffer as a result of or in connection with the Relevant Parties, providing equipment, facilities or services to the Borrower, Account Holder or Card Holder under this Credit Card Terms and Conditions:
- 3.8.1. all actions, proceedings and claims which may be brought by or against the Relevant Parties; and
- 3.8.2. all losses, damages and reasonable amounts of costs and expenses.
- 3.9. The Borrower, Account Holder and Card Holder hereby indemnifies and holds the Bank harmless against any claims, demands, proceedings, losses and damages (including direct, indirect and consequential) incurred, or suffered as result of any fraudulent transaction howsoever occurring, and/or where the Borrower instructed the Bank to increase the default recommended daily transactional card limit(s) at own risk and responsibility such increased amounts exceeding the recommended daily transactions limit(s), and/or any excesses incurred on the account exceeding the approved Facility Limit, and the Borrower accepts liability for such loss and damages.
- 3.10. If it is proved that any actions, proceedings, claims, losses, damages or amounts set out in clause 3.8 above was caused by gross negligence or wilful default of the Relevant Parties then the Borrower, Account Holder and Card Holder are not liable under clause 3.8 and 3.9 above to the extent that it is direct and reasonably foreseeable arising directly and solely from such gross negligence or wilful default of the Relevant Party.
- 3.11. The indemnity shall continue after the termination of the Facility Letter, read with the Credit Card Terms and Conditions.
- 3.12. The Borrower irrevocably undertakes and warrants that it will not make any demand or institute any action/claim against the Bank should it incur any damage or loss as result of the increased or decreased limit(s) on the Account.
- 4. AUTHORITY TO DEBIT YOUR ACCOUNT**
- 4.1. Each time the Card is used or the Card details are used to make a purchase or cash withdrawal, the Bank will debit the Account with the amount of the purchase or cash withdrawal.
- 4.2. The Borrower must repay the Bank for all payments that the Bank has made or will make to a Merchant for any purchase or cash withdrawal.
- 4.3. All payments the Bank makes to a Merchant for any transaction are final and irreversible, unless a reversal is allowed by the Visa rules and regulations as published by Visa from time to time.
- 4.4. The Bank may recover any amount not debited to the Borrowers Account, at any time after it becomes aware of the fact that the amount was not debited to the Account.
- 4.5. A dispute between the Borrower and any Merchant will not affect the Bank's right to debit the Account and receive payment.
- 4.6. Every Card Holder shall take all precautions possible to prevent the PIN from becoming known to any unauthorised person. Should the PIN, for any reason, become known to any other person the Borrower and/or Card Holder shall immediately advise the Bank of such fact. The Bank shall, on the written instruction of the Borrower, either cancel the Card or issue the Card Holder with a new PIN. All verbal instructions must be confirmed in writing within 48 hours.
- 4.7. The Borrower shall nevertheless be liable to the Bank for any transaction effected by the use of the Card until the receipt of such notice mentioned in clause 4.6 by the Bank.

- 4.8. The provisions relating to the loss or theft of the Card as set out in clause 10 hereunder shall apply Mutatis Mutandis to the situation where a Card Holder's PIN becomes known to an unauthorised person.

## **5. INTEREST**

- 5.1. The variable interest rate applicable to this Agreement is linked to the Bank's Prime Interest Rate, by a margin related to prime.
- 5.2. The Bank may from time to time vary the interest rate applicable to this Agreement if prime rate, fluctuates, provided that the new rate does not exceed the legal maximum permissible rate as prescribed in the Usury Act, Act 73 of 1968. If the Bank amends the applicable interest rate, it will advise the Borrower in writing within at least 30 (thirty) business days after the change becomes effective.
- 5.3. Interest-free period
- 5.3.1. If an interest-free period applies to the Account, the Borrower will not be charged interest on purchase transactions during this period.
- 5.3.2. The Borrower will be issued with a monthly statement which will show:
- 5.3.2.1. The full outstanding amount which the Borrower owes to the Bank; and
- 5.3.2.2. The due date by which the amount must be paid.
- 5.3.3. If the Borrower pays the full outstanding amount on or before the due date shown on the monthly statement, no interest will be charged on the account.
- 5.3.4. If the full outstanding amount is not paid on or before the due date shown on the monthly statement, the Borrower will be charged interest, from the date of each transaction on the Account, on both the statement balance and on any new purchases made on a Card (in other words, the Borrower will forfeit the interest-free period on these new purchases).
- 5.3.5. For the avoidance of doubt, if the full outstanding amount is not paid by the due date shown on the statement, the interest-free period will be suspended and interest will continue to be charged from the date of each transaction on the Account, until the Borrower has settled the full outstanding amount owed to the Bank.
- 5.3.6. Once settled in full, the Bank may, within its sole and absolute discretion, restore the balance of the interest-free period, (that is, the period from the date of full settlement until the due date for payment reflected on the Borrower's next monthly statement).
- 5.4. Debit interest calculation
- 5.4.1. Debit interest will be calculated daily, and capitalised and charged to the Account monthly.
- 5.4.2. Debit interest will be calculated at the rate decided by the Bank from time to time as shown on the Borrower's monthly statement, but will not exceed the maximum permissible annual finance charge rate allowed under the Usury Act.
- 5.4.3. Debit interest will be calculated, capitalised and charged at the maximum permissible annual finance charge rate allowed under the Usury Act when this Agreement is terminated.
- 5.5. Credit interest on the Account
- 5.5.1. The Borrower will earn interest on any credit balance on the Account.
- 5.5.2. Credit interest will be calculated daily and averaged over the full statement period and will be credited to the Account monthly.

## **6. FEES**

- 6.1. All Card transactions debited to the Account arising from this Agreement, will be subject to the Standard Chargeable Levies in respect of such fees as finance charges, service fees and tax levies on the Account as advertised and communicated from time to time and subject to change.
- 6.2. The Bank shall further be entitled to collect from the Borrower an item fee as determined from time to time by the Bank on each transaction made with a Card and/or PIN and to debit this fee against the Account.
- 6.3. In the event that a Card Holder authorises the Bank to re-issue any Card and/or PIN to him, such authorisation shall entitle the Bank to debit the cost of such re-issue against the Account.
- 6.4. The Bank may charge and recover the following fees in respect of this Agreement, provided that the amount of any fee charged and recovered does not exceed the maximum legally permissible fee as prescribed in legislation:
  - 6.4.1. an initiation fee in respect of the costs of initiating this Agreement;
  - 6.4.2. a monthly service fee recoverable by the Bank in connection with the routine administration cost of maintaining this Agreement;
  - 6.4.3. where applicable, the cost of any credit insurance/assurance for which the Bank pays the premiums on the Borrower's behalf;
  - 6.4.4. and all costs and expenses that the Bank may pay or incur in connection with the enforcement of, or the preservation of any rights under this Agreement (due to the Borrower's default); including legal costs (on an Attorney and own Client scale), valuation costs, collection commissions or other professional fees; and
  - 6.4.5. the Bank may charge additional fees should a Card Holder use any ATM other than a Bank ATM, including, but not limited to, foreign ATM's.

## **7. STATEMENTS, PAYMENTS, DEPOSITS**

- 7.1. Monthly statement
  - 7.1.1. The Bank will provide the Borrower with a monthly statement that will show all transactions for the month, the full amount owed to the Bank, the minimum amount due to the Bank and the due date by which this amount must be paid.
  - 7.1.2. Unless the Borrower informs the Bank, in writing within thirty (30) days of the statement date, that there is an error on the monthly statement, the statement sent to the Borrower, will be final and binding.
  - 7.1.3. Should the Borrower not receive the monthly statement, then it must bring this to the attention of the Capricorn Private Wealth Help Desk at 061 299 1444 or [service.privatewealth@capricorn.com.na](mailto:service.privatewealth@capricorn.com.na)
  - 7.1.4. If any transaction is unsuccessfully disputed, interest will accrue in the normal course on the transaction amount.
  - 7.1.5. Once this Agreement comes to end, in whatever manner, the Borrower will no longer receive a monthly statement.
- 7.2. Payments and deposits
  - 7.2.1. The Borrower may pay the full outstanding amount on or before the due date shown on the monthly statement. Alternatively, the Borrower may pay the outstanding amount over an extended period, but must pay at least the minimum monthly instalment by the due date shown on the monthly statement.

- 7.2.2. The Borrower's payment may not reach the Bank on the same day as payment is made, due to possible clearing and settlement delays. In these circumstances, the Bank will consider the payment to have gone through only once it receives the payment at its Card Division's offices in Windhoek. The Borrower is required to bear this in mind when making payments to the Bank.
  - 7.2.3. All payments the Bank receives will be credited, as applicable, in the following order (i) to expenses incurred by the Bank in collecting any amount the Borrower owes to the Bank, (ii) to charges and fees, (iii) to interest, and (iv) to the transaction amount.
  - 7.2.4. If a payment is sent to the Bank by post, the Bank will only be obliged to credit the Account when it receives the payment at the Bank's Card Division's offices in Windhoek. The risk of the postal payment being intercepted lost or stolen while in transit remains the Borrower's risk until the payment is received at the Bank's Card Division's offices in Windhoek.
  - 7.2.5. If a cheque is deposited into the Account, the proceeds of the cheque will only be available as cash when the drawer's bank has honoured the cheque irrespective of the cheque clearance period. If the cheque proceeds are made available on the Account prior to the cheque being honoured, the Bank is entitled to debit the Account with the amount of the cheque proceeds and any associated interest if the cheque is subsequently dishonoured by the drawer's bank for whatever reason.
- 7.3. Collateral
- 7.3.1. Collateral, if any, held by the Bank in respect of the Facility is fully described in the Facility letter.
  - 7.3.2. It is a specific condition that any Collateral held and/or required must be in the Bank's possession and in legal order before the Facility may be made available.

## **8. USE OF THE CARD**

- 8.1. Only a Card Holder may use a Card, and immediately when a Card Holder receives a Card he or she must sign the back of the Card in ink.
- 8.2. The Card Holder shall
  - 8.2.1. only use the Card, which is valid solely for the period specified thereon;
  - 8.2.2. comply with applicable Exchange Control Regulations whenever a Card Transaction occurs outside the Common Monetary Area;
  - 8.2.3. exercise all necessary precautions against loss or theft of the Card or disclosure of the PIN ensuring that any record of the PIN is kept separate from the Card ;
  - 8.2.4. immediately on loss or theft of the Card or disclosure of the PIN notify the Bank, verbal notice to be confirmed in writing within 48 hours;
  - 8.2.5. whilst always be liable for genuine Card transactions either in person or when transacting online electronically i.e. Internet , and, unless having availed of the lost Card Protection Plan and having notified the Bank as contemplated in (vi), be liable for all transactions debited to the Account prior to receipt of such notice.
  - 8.2.6. must not use the Card for any illegal transactions. It is the responsibility of the Card Holder to determine that a transaction is lawful before the Card Holder uses the Card .
  - 8.2.7. the Card Holder shall sign a sales voucher issued by a Merchant in respect of each Card transaction. Failure to sign such voucher shall not exempt the Card Holder from liability to the Bank for any payment made by the Bank in respect of the use of the Card.
  - 8.2.8. If the transaction takes place by mail order, telephone order, internet order or other access channel the Card Holder will be asked for certain Card related information before he/she may use these channels to transact.
- 8.3. Liability



- 8.3.1. The Bank shall not incur any liability to the Borrower/Card Holder if any Merchant declines or fails to honour the Card or if there is a dispute as to the nature, quality or quantity of any goods or services acquired from the Merchant, it being acknowledged that no Merchant is an agent of the Bank. In regard hereto it is agreed that:
  - 8.3.1.1. disputes arising from the supply of such goods and services shall be settled directly with the Merchant without the Bank being constituted a party thereto;
  - 8.3.1.2. the Borrower/Card Holder shall consequently not be relieved of his obligations to the Bank in respect of the underlying Card transactions;
  - 8.3.1.3. no claim by the Borrower/Card Holder against any Merchant may be the subject of or any cause for set-off or counterclaim against the Bank;
  - 8.3.1.4. any refund by a Merchant to the Borrower/Card Holder will be credited to the Account on receipt by the Bank of a properly issued refund voucher from the Merchant.
- 8.4. When a Card is issued to a Card Holder, the client will be requested to create his own PIN at a POS terminal within the Branch which PIN may be changed at the Card Holder's discretion. It is the responsibility of the Card Holder to keep the Card safe, and the PIN separate from the Card.
- 8.5. When a Card is used to buy goods or services from a Merchant, the Card Holder must use the PIN and may be requested to sign the transaction voucher.
- 8.6. The use of the Card outside the Common Monetary Area is subject to the applicable Exchange Control Regulations, as stipulated from time to time by the Bank of Namibia, and it is the Borrower and every Card Holder's responsibility to keep themselves informed of such regulations and act accordingly when making use of the Card.
- 8.7. Any transaction or payment in a currency other than Namibian Dollars will be converted to Namibian Dollar at Visa's prevailing rate of exchange on the date of posting of the transaction to the Account. The transaction will appear on the Account statement in Namibian Dollars.
- 8.8. The fraudulent, incorrect or illegal use of the Card by the Borrower and any Card Holder, or any other party, shall not relieve the Borrower of his or her liability to the Bank in respect thereof. The Card Holder must not use the Card for any illegal transactions, including the purchase of any goods and services prohibited by law in Namibia. It is each Card Holder's responsibility to determine the legality of any transaction before using the Card.
- 8.9. It is agreed that:
  - 8.9.1. the Bank, although exercising the utmost good faith and care, does not in any way guarantee the rights of any Card Holder and/or the Borrower to any cheques, bills of exchange or other negotiable instruments deposited;
  - 8.9.2. all negotiable instruments, cheques and bills of exchange will only be available in cash after being honoured in accordance with applicable Bank policies and statutory requirements;
- 8.10. The Borrower and the Card Holder acknowledge that a certificate signed by any Manager of the Bank (whose appointment need not be proved) shall be sufficient proof:
  - 8.10.1. of the amount owed and payable by the Borrower and/or Card Holder to the Bank; and
  - 8.10.2. that a transaction was effected by means of a Card Holder's Card and PIN and that a transaction can only be effected in such manner and by no other means.
- 8.11. In addition to any other transactions generated by any other means, detailed information of all Card transactions entered into by use of the Card and/or PIN, will be shown on the Borrower's statements in respect of the Account, should the Borrower have elected to receive such statements or request such statement from the Bank.

- 8.12. The use of a Card to access and transact over an Access Channel will be subject to the terms and conditions applying to such Access Channel from time to time.
- 8.13. The use and operation of the Card shall be subject to such arrangements as the Bank may have with the electronic clearing house, Namclear (Pty) Limited.

## **9. PROVISIONS RELATING TO ATMs**

- 9.1. ATM records including, but not limited to, transaction statements of the Bank shall be sufficient proof and evidence of the amounts withdrawn through the use of a Card by a Card Holder, entitling the Bank to debit the same from the Account.
- 9.2. The Bank shall in no circumstances be liable for the malfunction, temporary breakdown, failure of power supply to or misuse of an ATM or for any cause whatsoever which may result in the retention of a Card or it being defaced, torn, destroyed or rendered unusable, and shall not be held liable for any loss or damage which a Card Holder may suffer in consequence thereof.
- 9.3. Improper use of an ATM or unsuccessful attempts to key in the Card Holder's PIN will result in the automatic retention of the Card which the Card Holder may then only recover by calling at any of the Bank's branches with proper means of identification and payment of a fee.

## **10. LOSS OR THEFT OF CARD**

- 10.1. Should a Card be lost or stolen, the relevant Card Holder undertakes to report, telephonically, in writing, by email or through any other medium acceptable to the Bank, such loss or theft to any branch of the Bank, furnishing the Card Holder's identity number, the Account number, the Card number, and/or other information which the Bank may require.
- 10.2. A verbal or telephonic report of loss or theft shall be of no force and effect unless confirmed in writing by the Card Holder within 48 hours.
- 10.3. The Borrower and the Card Holders acknowledge and accept that all telephonic instructions are recorded for evidential purposes and hereby consent to such recording by the Bank.
- 10.4. A Card Holder shall not make a Card available to any other person and shall take all reasonable precautions possible to prevent the Card from being lost, stolen or falling into the possession of any unauthorised person.
- 10.5. The Borrower and the Card Holders shall remain jointly and severally liable to the Bank for any transaction effected by the use of a Card until receipt by the Bank of the written notice specified in clause 4.6 above, and such Card transactions shall be deemed to have been effected by the relevant Card Holder himself.
- 10.6. In the event of a dispute as to the effective date and time of a report contemplated in clause 4.6 above, the time and date of receipt of the written confirmation shall be prima facie regarded as the date of notification to the Bank.
- 10.7. Claims in respect of disputed transactions that take place more than 60 days before the date of receipt of the written confirmation in terms of clause 4.6 above will not be considered by the Bank.

## **11. SYSTEMS MALFUNCTIONS**

- 11.1. The Bank will not be liable for any loss suffered by the Borrower and/or the Card Holder arising from any malfunction, failure or delay in any ATM, electronic point of sale device, access channel or shared networks.

## **12. DURATION, VALIDITY, RENEWAL AND TERMINATION OF THE CARD AND AGREEMENT**

- 12.1. All Cards shall at all times remain the property of the Bank and the Bank may, in its sole discretion, terminate its validity at any time or refuse to renew it and demand the return thereof, in which event the relevant Card Holder undertakes to return the Card to the Bank. Termination of a Card shall be at the Bank's sole discretion.

- 12.2. The Bank reserves the right to take legal action against a Card Holder and the Borrower should the Card Holder continue to make use of a Card after it has been terminated.
- 12.3. On the closing of the Account, it shall be the duty of the Borrower to return all issued Cards immediately to the Bank.
- 12.4. In the event of the death, sequestration, liquidation, dissolution, winding up or deregistration of the Principal Card Holder, or the breach by him of any of the conditions of this Agreement, the Bank may, in addition to other remedies it may have, take such steps as are necessary to stop and cancel any Card transactions and to terminate the Card.
- 12.5. The issuing of a Card, the extent of services accessible thereby as well as the limitation or termination of the use of a Card will, at all times, be at the discretion of the Bank. The Bank may exercise this right of limitation or termination without notice to the Borrower and/or Card Holder.
- 12.6. The Card shall be replaced at the discretion of the Bank at its expiry date, unless the Borrower has given contrary instructions.
- 12.7. The Bank shall be entitled to give notice of the cancellation of the Card to any Merchant or anyone else as it may deem fit, and neither the Borrower nor the relevant Card Holder shall have cause of action or remedy in respect of such notification.
- 12.8. The Borrower may terminate this agreement at any time by surrendering all Cards to the Bank and providing the Bank with written instructions to cancel the Cards and the Facility.
- 12.9. Any termination in terms hereof shall not affect the Borrower and/or Card Holder's liability to the Bank in respect of any use of a Card.
- 12.10. The Bank may, within its sole discretion, terminate this Agreement and/or a Card Holder's right to use a Card and/or the Facility with immediate effect.
- 12.11. The Bank's right to act under this clause 12 will typically be exercised if, for instance, (i) the Borrower does not pay the Bank any amounts due on time or at all; (ii) if the Borrower and/or a Card Holder breaches any term of this Agreement; (iii) if there is fraud or the Bank suspects there may be fraud on the Account; or (iv) if the Borrower is liquidated; or (v) if the Bank is compelled to do so by law.
- 12.12. When this Agreement and/or the Facility and/or a Card Holder's right to use a Card is terminated, the Borrower's full indebtedness to the Bank will immediately become due and payable. The Borrower must then pay to the Bank the full amount outstanding on the Account.
- 12.13. Even after this Agreement has been terminated, the Bank remains entitled to exercise the rights it has acquired under this Agreement before it was terminated.

### **13. MODIFICATIONS TO AGREEMENT**

- 13.1. The Borrower acknowledges and agrees that the Bank may, in its sole discretion, amend any provision of this Agreement, in which event:
  - 13.1.1. such amendment shall not constitute a novation of the whole Agreement;
  - 13.1.2. any such amendment shall be effective and binding on the Borrower 10 (ten) days after the dispatch of written notice of amendment unless the Borrower, within such period, terminates the agreement in terms of clause 12.8.
- 13.2. Any relaxation or indulgence or extension of time granted by the Bank to the Borrower and/or a Card Holder shall not constitute or be deemed to be a novation or waiver of any of the Bank's rights against the Borrower and/or Card Holder in terms of this Agreement.

### **14. EVENTS OF DEFAULT**

- 14.1. An Event of Default shall occur if any of the following events, each of which shall be severable and distinct from the others, occurs (whether or not caused by any reason whatsoever outside the control of the Borrower or any other person), namely if:
- 14.1.1. the Borrower defaults in the performance of any provision of this Agreement, or any provision of any other agreement entered into with the Bank, and such default, if capable of remedy, continues for a period of 10 (ten) Business Days after receipt of a written notice from the Bank calling upon the Borrower to remedy such default; or
  - 14.1.2. the Borrower makes any general assignment for the benefit of its creditors or compromises with its creditors generally without the written consent of the Bank, which consent shall not be unreasonably withheld; or
  - 14.1.3. the Borrower is deregistered, or its existence comes to an end, or it is placed under provisional or final liquidation or sequestration, or provisional or final judicial management, or takes steps for its voluntary winding-up or commits any acts of insolvency; or
  - 14.1.4. a judicial manager, receiver, liquidator, administrator, or similar officer is appointed in respect of the Borrower or in respect of all or any material part of its assets; or
  - 14.1.5. any judgment of any court or arbitration awarded against the Borrower remains unsatisfied for a period of 10 (ten) Business Days after it has been granted against the Borrower and such judgment or award is not the subject of an application for rescission, or review, or appealed against within the period allowed for such rescission, review or appeal, in each instance diligently pursued and, in the event of such application, review or appeal being unsuccessful, the Borrower fails to make immediate payment thereof; or
  - 14.1.6. any asset or assets of the Borrower is/are attached under a writ of execution and the Borrower fails to bring an application to stay such execution for more than 10 (ten) Business Days after having been notified thereof in writing or having made the application fails to obtain an order on substantially the same terms as that sought; or
  - 14.1.7. any third party loan, debt, guarantee or any other obligation constituting indebtedness of the Borrower, whether or not the Bank is concerned therewith, becomes due and payable prior to its specified maturity by reason of default by the Borrower, or is not repaid when due, or any creditor of the Borrower becomes entitled to declare any indebtedness due and payable prior to its specified maturity and remains unpaid for 10 (ten) Business Days from the due date as aforesaid; or
  - 14.1.8. more than 20% (twenty percent) of the beneficial interest in the Borrower is sold, transferred, exchanged or otherwise disposed of, in any one transaction, or a series of transactions, to another person or entity, or there is a change in the beneficial interest of the Borrower which will have the result that the majority beneficial interest holder from that as at the Signature Date, without the prior written consent of the Bank, changes; or
  - 14.1.9. the Borrower repudiates this Agreement; or
  - 14.1.10. a Material Adverse Effect occurs and the Bank elects in its discretion not to alter the interest rate as set out in clause 5 above; or
  - 14.1.11. the Borrower is unable or ceases for any reason whatsoever to conduct its normal line of business in the ordinary and regular manner; or
  - 14.1.12. termination or revocation and/or failure to renew or extend any authorization, approval, consent, permit or license which is required in order for the Borrower to carry on its business, or to perform its obligations; or
  - 14.1.13. any lawful right of retention is exercised against the Borrower, or

- 14.1.14. any representation or statement made or deemed to be made by the Borrower under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made, unless the event or circumstances giving rise to the representation being incorrect or misleading is/are capable of remedy, and is/are remedied within 15 (fifteen) Business Days after the earlier of (i) the Bank giving notice to the Borrower, or (ii) the Borrower becoming aware of the misrepresentation.
- 14.2. Upon the happening of an Event of Default as provided for in this clause 14, the total Principal Debt, together with accrued interest, and all other amounts accrued or outstanding under this Agreement will immediately become due and payable (whether due or not), and the Bank shall, in addition to and without prejudice to any other rights the Bank may have in terms of this Agreement, or in law, including its right to claim damages, have the right in its sole discretion to:
- 14.2.1. immediately cancel this Agreement and demand immediate payment of the total Principal Debt.
- 14.2.2. to realize so much of the Collateral as shall be required to discharge the Total Principal Debt due and payable and shall apply any proceeds realized from any such Collateral in discharge of such obligations.

## **15. DOMICILIUM AND NOTICES**

- 15.1. All legal processes against the Borrower and/or a Card Holder in terms of this Agreement may be delivered to or served at the address as stated on the application form which address shall constitute the Borrower and all Card Holders' chosen *domicilium citandi et executandi* ("*domicilium*").
- 15.2. The Borrower may on 14 (fourteen) days written notice advise the Bank of any alteration of such domicilium, which shall be a physical address.
- 15.3. All notices by the Bank to the Borrower and/or a Card Holder may be dispatched to the Borrower's postal address as advised from time to time and shall be deemed to have been received by the Borrower and/or Card Holder on the 7<sup>th</sup> (seventh) day after posting.
- 15.4. All notices by the Borrower and/or Card Holder to the Bank must be posted by pre-paid registered post to the Bank's Cards Department, PO Box 15, Windhoek, Namibia or delivered to the appropriate Bank branch, and if delivered a receipt stating the date and time of delivery must be obtained.
- 15.5. This provision shall not be construed as precluding the utilisation of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

## **16. LOUNGEKEY ACCESS**

- 16.1. In the event that the Borrower is eligible for LoungeKey access, the Borrower and/or Cardholder agrees to be bound by the rules as prescribed by the Lounge operator.

## **17. OTHER CONDITIONS**

- 17.1. **The availability of the Facility is subject to the Borrower signing the Bank's Facility Letter or alternatively through the utilization of the Facility acceptance shall be expressly implied, subject to the registration of Collateral and fulfilment of special conditions as more fully described in the Facility Letter, where applicable.**

## **18. GOVERNING LAW AND JURISDICTION**

- 18.1. Should the Bank exercise its rights against a Card Holder and/or the Borrower in respect of any breach of a Card Holder's and/or the Borrower's obligations hereunder, the Borrower and/or Card Holder undertake, jointly and severally, to pay all expenses incurred by the Bank, including all legal charges (on attorney and Borrower scale), collection charges and tracing fees. The Borrower authorises the Bank to debit the Account with all such costs incurred.

- 18.2. The Borrower and/or Card Holder, jointly and severally, agree to the jurisdiction of the Magistrates Court of Namibia in respect of any matter relating to the conduct of the Account, for any action that may arise from the use of the Card and/or PIN, or arising from this Agreement, notwithstanding that the amount in issue may exceed the jurisdiction of such court. The Bank shall, in its discretion, be entitled to institute any such proceedings in the High Court of Namibia.

## **19. DEDUCTION AUTHORIZATION**

If a Card Holder authorises the Borrower, as his or her employer, to deduct any part of the monthly instalment owed by the Borrower to the Bank and payable under this Facility from the Card Holder's remuneration and to pay it over to the Bank or its agent and the Card Holder ceases to be an employee of the Borrower, or the authorisation for deduction is cancelled for whatever reason, the Card Holder undertakes to complete a deduction authorization in favour of the Bank for the deduction of the monthly instalments due under this Facility.

## **20. CREDIT BUREAU REGULATIONS, 2014**

- 20.1. The Borrower and each Card Holder hereby acknowledges and agrees that, without further reference or notice to the Borrower:
- 20.1.1. the Bank may request a credit report on the Borrower and/or a Card Holder from one or more registered credit bureau(s) and the relevant credit bureau will retain a record of such request(s) by the Bank;
  - 20.1.2. the existence of this account/facility, including any favourable or unfavourable information having bearing on the credit history or payment profile of the Borrower and/or a Card Holder may be provided by the Bank to a registered credit bureau upon request; and
  - 20.1.3. the Borrower and each Card Holder is entitled by law to request a copy of said credit report from the relevant credit bureau and where applicable, to request the correction of inaccurate information contained therein.

## **21. DISCLOSURE OF INFORMATION**

- 21.1. All information held by the Bank and the Bank's use of such information will be held and used in accordance with the applicable privacy and data protection legislation and the Bank's Privacy Policy. The Privacy Policy, which is incorporated into this Agreement by reference (*ie forms part of this Agreement*), sets out further information regarding the manner in which the Bank collects, processes, shares and protects the information of the Borrower and the Card Holders.
- 21.2. Notwithstanding sub-clause 21.1 above the Bank shall be entitled, should it be deemed necessary, to pass on any information to a credit bureau, a police officer or any other person, information pertaining to the Borrower and/or Card Holder in the event of improper or fraudulent use of a Card by him, or in order to facilitate the recovery of same in the event of theft, loss or suspected theft or loss of a Card , and the Borrower and all Card Holders hereby expressly authorise such disclosure.

## **22. UNDERTAKINGS**

### **22.1. Positive Undertakings**

22.1.1. The Borrower hereby agrees and undertakes that the Borrower shall:

22.1.1.1.obtain and comply with the terms of and do all that is necessary to maintain in full force and effect and to fully comply with the terms and conditions provided for in all material authorizations, permit, agreements, endorsements, approvals, licenses and consents required to enable the Borrower to lawfully conduct its business and affairs (including the environmental authorizations/permits);

22.1.1.2.permit the Bank to verify any document regarding environmental risks, to notify with regards to inspections carried out and the fines applied by the competent environmental authorities and to periodically inform the Bank about the fulfilment and the results of the monitoring activity in respect of environmental risks; and

22.1.1.3.maintain or improve upon the environmental risk level existing at the moment when the Facility was made.

### **22.2. Negative Undertakings**

- 22.3. Except as otherwise provided for in this Agreement, the Borrower shall not engage in any activity listed on the Bank's Exclusion List attached hereto as **Schedule 1** without the prior written approval of the Bank, which approval shall not be unreasonably withheld:

## **23. REPRESENTATIONS AND WARRANTIES**

- 23.1. The Borrower, together with each Card Holder, (if applicable) represents and warrants in favour of the Bank that:
- 23.2. The Borrower is not in contravention of any Applicable Laws, the terms and conditions provided in any authorizations, permit, agreements, endorsements, approvals, licenses and consents (including the environmental authorizations/permits), or any applicable Exchange Control Regulations.

## **Schedule 1**

### **Exclusion List**

**A:** Projects that involve the following:

1. Production or trade in any product or activity deemed illegal under Namibian laws or regulations or international conventions and agreements;
2. Production or activities involving harmful or exploitative forms of forced labour<sup>1)</sup> or child labour<sup>2) 3)</sup>;
3. Activities or materials subject to international phase outs or bans such as:
  - a) ozone depleting substances<sup>4)</sup>, PCB's (Polychlorinated Biphenyls)<sup>5)</sup>, and other specific, hazardous pharmaceuticals, pesticides/herbicides or chemicals<sup>6)</sup> unless they are approved under and/or regulated by Namibian laws;
  - b) trade in wildlife or wildlife products regulated under the Convention on International trade in Endangered Species or Wild Fauna and Flora (CITES)<sup>7)</sup>, unless the activity is permitted under Namibian law;
  - c) hazardous materials such as radioactive materials<sup>8)</sup>, unbounded asbestos fibers<sup>9)</sup>. If the companies are solely providing services to the uranium mines, then the financing can only be done under the agreed 1% threshold limit for the Lessor;
  - d) cross-border trade in waste and waste products unless compliant to the Basel Convention and the underlying regulations<sup>10)</sup>,
  - e) unsustainable fishing methods (e.g. blast fishing and drift net fishing in the marine environment using nets in excess of 2.5 km in length);
4. Destruction<sup>11)</sup> of High Conservation value areas<sup>12)</sup>;
5. Production and distribution of racist, anti-democratic and/or neo-nazi media;
6. Pornography or prostitution;
7. Commercial logging operations for use in primary tropical moist forest;
8. Production or trade in wood or other forestry products other than from sustainably managed forests. This is aimed at reducing illegal logging and uncontrolled exploitation of forests. This applies to financing logging or trading with wood, but not wooden products. Production of charcoal is acceptable as long as the wood does not come from illegal logging;

**B:** In the event that any of the following products form a substantial part of a company's primary operations, or a financial institution, investment fund or company's financed business activities: <sup>13)14)</sup>

9. production in weapons and munitions;
10. production in alcoholic beverages (excluding beer and wine);
11. gambling, casinos and equivalent enterprises unless it are approved and regulated under Namibia gambling laws; and
12. production in tobacco.

**C:** When investing in microfinance activities, the Bank applies the following items in addition to the excluded items listed above:

13. production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals. Hazardous chemicals include gasoline, kerosene, and other petroleum products; and
14. production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.



**D:** For Trade finance projects, given the nature of the transactions, the bank applies the following items in addition to the excluded items listed above.

15. Production or activities involving harmful or exploitative forms of forced labor<sup>2</sup>/harmful child labor.<sup>3</sup>

**Foot Notes:**

1) Forced labour means all work or service, not voluntarily performed that is extracted from an individual under threat of force or penalty as defined by ILO Conventions.

2) Persons may only be employed if they are at least 14 years old, as defined in the ILO Fundamental Human Rights Conventions (Minimum Age Convention C138, Art. 2), unless local legislation specifies compulsory school attendance or the minimum age for working. In such cases the higher age shall apply.

3) Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development.[IFC]

4) Ozone-depleting substances: Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol lists ODS and their target reduction and phase-out dates. -A list of the chemical compounds regulated by the Montreal Protocol, which includes aerosols, refrigerants, foam blowing agents, solvents, and fire protection agents, together with details of signatory countries and phase out target dates, is available at [http://ozone.unep.org/new\\_site/en/montreal\\_protocol.php](http://ozone.unep.org/new_site/en/montreal_protocol.php)

5) PCBs: Polychlorinated biphenyls, a group of highly toxic chemicals. PCBs are likely to be found in oil-filled electrical transformers, capacitors and switchgear dating from 1950-1985.

6) Reference documents are UN Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments; Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); Stockholm Convention on Persistent Organic Pollutants; WHO Classification of Pesticides by Hazard; EU Regulation (EEC) No 2455/92 Concerning the Export and Import of Certain Dangerous Chemicals, as amended.

7) CITES: Convention on International Trade in Endangered Species or Wild Fauna and Flora. A list of CITES listed species is available from [www.cites.org](http://www.cites.org).

8) This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any other equipment where the radioactive source is considered to be trivial and/or adequately shielded.

9) This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.~~[IFC]~~

10) Reference documents are: Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal (details at <http://www.basel.int/> ); Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste; Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations.

11) Destruction means the (1) elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use or (2) modification of a habitat in such a way that the habitat's ability to maintain its role is lost.

12) High Conservation Value (HCV) areas are defined as natural habitats where these values are considered to be of outstanding significance or critical importance (see [www.hcvnetwork.org](http://www.hcvnetwork.org)).

13) For companies, "substantial" means more than 20 % of their consolidated balance sheet or earnings. For financial Institutions and investment funds, "substantial" means more than 20% of their underlying portfolio.

14) This does not apply to project sponsors who are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to a project sponsor's primary operations.